IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

Balram vs. The State of Raj. & ors.

S.B. Civil Writ Petition No. 6646/06 under Article 226 of the Constitution of India.

Date of Order: October 11, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Vijay Bishnoi for the petitioner.
Mr. O.P. Boob, Addl.GA.
Mr. Ashwini Swami for the respondent no.5.

BY THE COURT:

The petitioner was applicant for allotment of Fair Price Shop Dealership of village 2 KLD. The petitioner submitted his application before the District Supply Officer,Sri Ganganagar on 25.6.2005. Respondent no.5 was also applicant for the same dealership for same shop of village 2 KLD. According to the condition of allotment of Fair Price Shop Dealership , the dealership can be given to the person who is resident of the

same village for which he is applying. According to the petitioner, respondent no.5 was resident of village 22 RJD of Tehsil Ghadsana. His mother was Sarpanch of the Gram Panchayat 22 RJD and father was Ward-Panch and Up-Sarpanchof Gram Panchayat 22 RJD. According to the petitioner, respondent no.5 has no relation with village 2 KLD. Respondent no.5 was given dealership of the shop of village 2 KLD and the petitioner came to know that respondent no.5 got the said dealership by producing forged documents which includes the forged ration card obtained by respondent no.5. Even the gram Panchayt of village 2 KLD passed the resolution dated 6.1.2006 and requested the Collector that the dealership of Fair Price Shop of village 2 KLD be given only to the resident of village 2 KLD.

According to the petitioner in the ration card of respondent no.5, copy of which has been placed on record by the petitioner along with the writ petition as Annex.5, no date of its issuance has been mentioned. The ration card number given is 832. On enquiry, the petitioner came to know that

ration card no.832 was issued in the name of one Yaru Khan s/o Shri Gehane Khan and this ration card was issued on 28.8.2005. The petitioner also placed on record the photo-stat copy of the application submitted by Yaru Khan for ration card, upon which the ration card no.832 was issued and the Sarpanch of village 2 KLD also certified that ration card no.832 was issued in the name of Yaru Khan and not in the name of respondent no.5. The Secretary of the Gram Panchayat 2 KLD also submitted a report to this effect to the Extension Officer of Panchayat Saiti, Anupgarh on 21.8.2006. Not only this but the Assistant District Magistrate, Ghadsana, District Sriganganagar issued a bonafide resident certificate of respondent no.5 on 21.6.2005 certifying that respondent no.5 is resident of Gram Panchayat 22 RJD. Said certificate was issued by the Assistant District Magistrate, Ghadsana on the basis of application and affidavit submitted by respondent no.5 as well as on the basis of the documentary proof submitted by respondentno.4 as well as on the basis of the report of Sarpanch of Gram Panchayat 22 RJD. It is also

submitted that the villagers of village 2 KLD also submitted an complaint to the Assistant District Magistrate, Ghadsana and who enquired into the matter. Further, that respondent no.5 is resident of 22 RJD, is verified from the voter list of Gram Panchayat 22 RJD wherein name of respondent no.5 is there along with his father, mother and wife. It is also submitted that the Tehsildar, Ghadsana, in collusion with respondent no.5, has issued a certificate of residence illegally and this fact is proved from the another certificate issued by the very Tehsildar dated 21.6.2005, wherein he certified that respondent no. 5 is resident of Gram Panchayat 22 RJD, whereas just one and half month thereafter, the Tehsildar issued certificate that respondent no.5 is resident of village 2 KLD. According to the petitioner, on application of the respondent, for grant of certificate, an enquiry was ordered and on back of application (Annex.14), the respondent's mother herself, who was Sarpanch of the Gram Panchayat 22 RJD, certified that respondent no.5 is resident of village 2 KLD and in view of the difference in date, it is submitted that the

certificate was issued even prior to making of the application by respondent no.5.

In view of the above facts, the petitioner being aggrieved against the order dated 2.5.2006, preferred appeal before the Additional Food Commissioner,Government of Rajasthan, under Clause 22 of the Rajasthan Foodgrain & Other Essential Commodity (Regulation of Distribution) Order, 1976. The petitioner's appeal was dismissed vide order dated 2.11.2006. Therefore, the petitioner has preferred this writ petition challenging the order dated 2.5.2006 and 2.11.2006.

Respondent nos. 1 to 4 supported the orders under challenge.

Respondent no.5 submitted separate reply and stated that the petitioner himself before filing this writ petition, filed civil suit no.4/06 wherein he submitted application under Order 39 Rule 1 and 3, C.P.C. The petitioner's said injunction application was dismissed vide order dated 17.2.2006 (Annx.R/1). The said civil suit was dismissed by the

Civil Court vide order dated 13.7.2006 (Annex.R/2). Before dismissal of the said suit of the petitioner, the petitioner's appeal against the refusal of the injunction by the trial court was dismissed vide order dated 19.4.2006 (Annex. R.3). In this way, the petitioner after failing in getting any relief from the civil court and after dismissal of the suit, has preferred this writ petition which is not maintainable and is liable to be dismissed. It is also submitted that the petitioner has raised disputed questions of facts which could have been determined by the civil court and the petitioner's suit has been dismissed, therefore, now no fresh enquiry can be conducted. It is submitted that the petitioner is resident of 2 KLD and for that purpose, he placed on record certain documents which were considered by the allotting authority carefully and thereafter all the contentions of the petitioner were considered by the appellate authority in detail and thereafter finding of fact has been recorded in favour of respondent no.5 about his residence. Therefore, also the writ petition of the petitioner may be dismissed on the basis of the finding of fact recorded

by the two courts below. It is also submitted that a criminal complaint was also filed in which FR has been given by the police. It is also submitted that one Uttam Singh, Sarpanch was the member of the committee at the relevant time, who accorded sanction for Fair Price Shop Dealership to the respondent but no objection was raised at that time and he is instigating the persons to raise objection against allotment of shop to respondentno.5.

Learned counsel for respondent no.5 further submitted that the copies of the documents which have been placed on record by the petitioner along with the writ petition, appear to be forged one. According to the learned counsel for the respondent, the petitioner has submitted copy of the ration card register as Annex.9. The petitioner also submitted copy of same ration cards register in the civil court and copy of which has been placed on recored by the respondent along with the reply. From perusal of Annex.9 with the another copy submitted by the petitioner in the civil court, it is clear that Annex.9 was prepared subsequently and it has entries of date

against S.No.832 in column-2, whereas in the another copy, there is no date mentioned against entry no.832. In the copy submitted by the petitioner as Annex.9, the year of the register is not mentioned, whereas in the copy submitted by the petitioner earlier, there is mention of year also. There are more entries in the register Annex.9 than the copy of the register submitted by the petitioner on earlier occasion.

The learned counsel for the respondent submitted that respondent's ration card in question was issued as the respondent who was earlier resident of 22 RJD, shifted from 22 RJD to 2 KLD. The respondent deposited his ration card issued from village 22 RJD and this has been certified by the Gram Sewak and Sarpanch of the Gram Panchayat. The ration card was issued to the respondent on his application which he submitted in *Abhiyan* and his name is entered in the register prepared at the time of *Abhiyan*, copy of which has been placed by the respondent. It is admitted by the respondent that there is inadvertent mistake in giving number of ration card but the fact of issuance of ration card to the respondent

is completely proved from the corroborative evidence and that is the list prepared in the register of *Abhiyan* containing several names along with the respondent's name. According to the learned counsel for the respondent, the petitioner is trying to take help of an inadvertent clerical mistake crept in ration card. It is also submitted that the respondent who was resident of village 22 RJD, when applied for certificate of residence of village 2 KLD, a report was prepared and if enquiry was made from the Sarpanch of Gram Panchayat 22 RJD, who happens to be the mother of respondent no.5, then that cannot be questioned in view of the fact that she was the best witness who could have certified as Sarpanch of the village where respondent no.5 was earlier residing and she was mother of the respondent. In duel capacity, her statement was relevant. In view of the above reason, learned counsel for the respondent submitted that the writ petition of the petitioner may be dismissed.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

It is not in dispute that the petitioner earlier filed suit in the civil court and wherein the petitioner sought for permanent injunction against the respondent State and the District Supply Officer,Sriganganagar. In said suit, the petitioner's application for grant of injunction was dismissed on merit by order dated 17.2.2006. The petitioner's appeal preferred against the order dated 17.2.2006 was dismissed by the appellate court vide order dated 19.4.2006, that too on merit. Thereafter, the petitioner without seeking any permission from the court for availing any alternative remedy, withdrawn his suit unconditionally and the same was dismissed vide order dated 13.7.2006. In the writ petition, the petitioner has challenged the residence of respondentno.5 with the help of certain documents, whereas respondent no.5's contention is that earlier he was resident of 22 RJD and he was holding the ration card of said Gram Panchayat of village 22 RJD. He surrendered the ration card and shifted to village 2 KLD. The respondent placed on record the copy of the register wherein there are names of several persons on

whose applications, decision was taken by the authorities during *Abhiyan*. Respondent no.5 submitted that a mistake in ration card number was a mistake committed by the employee of the State and not by respondent no.5. The fact that respondent no.5 applied for ration card, is corroborated from the entry made in the relevant register and, therefore, ration card is not forged one. So far as the entry of name of respondent ho.5 in the voter list is concerned, that was natural because of the reason that earlier he was resident of the village 22 RJD and in that situation, his certificate of residence, obtained by respondent no.5 evidencing his residence at 2 KLD may have earlier evidence of his residence at 22 RJD.

The criminal case was also launched against respondent no.5 wherein FR was submitted, however, any finding in that case, may not be very much relevant in this writ petition and even if cognizance would have been taken, that may not have been very much material.

In view of the above reason, the writ petition involves

several disputed questions of fact which could have been decided in the civil suit but the petitioner, after availing that remedy, has withdrawn the suit. After dismissal of the application, appeal against refusal of the injunction was also dismissed and, therefore, the factual enquiry cannot be held here. There is another reason and that is that the documents produced by the petitioner in this writ petitions are also not much reliable in view of the difference in the copies of the documents submitted by the petitioner and the copies of the documents submitted by the petitioner in the civil court as shown by the learned counsel for respondent no.5.

In view of the above reason, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA),J.

mlt.